

Client Alert

Antitrust & Litigation Practice Group

April 11, 2012

CFPB Proposes New Rules for Mortgage Servicing Industry

On April 10, 2012, the Consumer Financial Protection Bureau (CFPB) outlined new rules it is proposing to adopt to increase accountability and transparency in the mortgage servicing industry. Pursuant to its authority under the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, the CFPB plans to publish the rules this summer, and, after a public comment period, to finalize them in January 2013. An overview of the rules under consideration is available at http://files.consumerfinance.gov/f/201204_cfpb_small-business-review-outline_mortgage-servicing-rulemaking.pdf and a factsheet with additional background information is available at http://files.consumerfinance.gov/f/201204_cfpb_factsheet_putting-service-back-in-mortgage-servicing.pdf.

The proposed rules aim to provide borrowers with detailed and accurate information about their loan on a regular basis so that they can make informed decisions, and to provide them with resources to navigate changes in their financial position.

In addition to implementing the Dodd-Frank Act, the CFPB proposed rules draw heavily on the National Servicing Standards that major servicers committed to follow in order to resolve allegations by the Department of Justice and most State Attorneys General in April in *United States v. Bank of America Corporation*, CV 12-00361 (D.D.C. April 4, 2012).

Highlights from the CFPB proposed rules with a comparison to the parallel provisions in the National Servicing Standards follow:

- *Monthly mortgage statements*: the CFPB proposed rules require servicers to provide borrowers with detailed monthly mortgage statements. Some of the detail required in the proposed rules goes beyond what is required under the National Servicing Standards, including the requirement to provide contact information for housing counseling agencies or programs, and additional loan information such as the loan maturity date, the servicer's policy regarding partial payments received from borrowers, and the amount and due date of the next payment.
- *Notice of interest rate adjustments*: the CFPB proposed rules require servicers to notify borrowers up to 6 to 7 months prior to the initial interest rate reset or adjustment of a hybrid adjustable rate mortgage at

For more information, contact:

Jeffrey S. Spigel
+1 202 626 2626
jspigel@kslaw.com

Peter M. Todaro
+ 1202 626 5518
ptodaro@kslaw.com

King & Spalding
Washington, D.C.
1700 Pennsylvania Avenue, NW
Washington, D.C. 20006-4706
Tel: +1 202 737 0500
Fax: +1 202 626 3737

www.kslaw.com

Client Alert

Antitrust & Litigation Practice Group

the end of the introductory period. In addition, the CFPB proposal requires servicers to provide borrowers with contact information for housing counselors with the first interest rate reset notice. By comparison, the National Servicing Standards require notice of interest rate or escrow account adjustments no later than 21 days before the new amount is due.

- *Force-placed insurance:* the CFPB proposed rules require servicers to advise consumers about and provide options for avoiding “force-placed” hazard insurance prior to charging borrowers. The National Servicing Standards requirements are virtually identical.
- *Loss mitigation:* the National Servicing Standards and the CFPB proposed rules both require robust loss mitigation programs. Also, like the National Servicing Standards, the CFPB proposed rules may require servicers to establish a single point of contact for delinquent and troubled borrowers.
- *Applying payments promptly:* the CFPB proposed rules require servicers to credit payments as of the date of receipt, while the National Servicing Standards require that payments be posted no more than two business days after receipt. The CFPB proposed rules do not currently require non-conforming payments be accepted. The National Servicing Standards, however, set specific guidelines for when non-conforming payments must be applied to a loan account.
- *Records accuracy:* like the National Servicing Standards, the CFPB proposed rules will establish policies and procedures for handling borrower accounts and maintaining accurate account information.
- *Correcting errors:* the National Servicing Standards require servicers to establish procedures for prompt billing dispute and error resolution. The CFPB has proposed more specific guidelines including requiring servicers to acknowledge within five days and investigate and resolve within 30 days borrower claims of errors, with a shorter turnaround for errors regarding foreclosures or payoffs. Importantly, this requirement may put mortgage servicers at the biggest risk for noncompliance with the proposed rules given the proposed 30 day time frame for resolving errors.

These proposed rules have significant implications for the mortgage servicing industry given the broad enforcement powers of the CFPB, which include the ability to conduct joint investigations with other agencies, issue subpoenas, demand documentary and other materials, require sworn testimony, conduct hearings and adjudication proceedings, litigate civil actions and refer criminal matters to the Department of Justice. It can also impose monetary penalties and, unlike the Federal Trade Commission, the CFPB’s enforcement powers extend to banks, many of which are also mortgage servicers.

If you have any further questions, please contact the authors, who have significant experience with the issues covered by the proposed rules.

Celebrating more than 125 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 800 lawyers in 17 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality and dedication to understanding the business and culture of its clients. More information is available at www.kslaw.com.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice.